

Neutral Citation Number: [2026] EAT 55

Case No: EA-2024-000727-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17 April 2026

Before :

HIS HONOUR JUDGE AUERBACH

Between :

MR A HARPER AND OTHERS

- and -

ALLIANCE HEALTHCARE MANAGEMENT SERVICES LTD

Appellants

Respondent

Laurène Veale (instructed by Thompsons Solicitors LLP) for the **Appellant**
Jesse Crozier (instructed by Lewis Silkin LLP) for the **Respondent**

Hearing date: 10 February 2026

JUDGMENT

SUMMARY

UNLAWFUL DEDUCTION FROM WAGES

The claimants in the employment tribunal are LGV drivers. The respondent paid them overtime in respect of hours worked in excess of 48 hours in any given week. They claimed that they were “entitled to be paid at an enhanced rate of pay for working hours that exceed their contractually prescribed daily hours.” They contended that this contractual entitlement was found in the Staff Handbook.

The tribunal found that the Staff Handbook did not confer such a right on the claimants, because it contained a provision which excluded drivers from its substantive provisions relating to overtime.

The tribunal did not err in that interpretation of the Staff Handbook.

Nor did the tribunal err by failing to determine the position in relation to the provisions relating to overtime contained in a different document, the Drivers’ Handbook. It correctly identified the scope of what it had to decide by reference to the final amended Particulars of Claim that had been tabled by the claimants’ representatives; and the list of issues that had been agreed by the representatives on both sides in advance of the hearing at which the matter was considered. **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA Civ 185; [2025] ICR 1231 applied.

HIS HONOUR JUDGE AUERBACH:

Introduction, Background, Litigation History

1. The claimants in the employment tribunal appeal from a decision arising from a Preliminary Hearing (PH) held at Birmingham before EJ McTigue. In this appeal, as before the tribunal, the claimants were represented by Ms Veale, and the respondent by Mr Crozier, both of counsel.

2. The respondent is a distributor and wholesale supplier of pharmaceutical, surgical, medical and healthcare products. It was formerly called Alliance UniChem plc, and, before 1997, Unichem. In 1996 it set up a joint venture with United Drug plc called UniDrug Distribution Group (UDG). In 2014 it assumed full ownership of UDG. In 2015 UDG was rebranded as Alloga UK.

3. In December 2022 Mr Harper began a claim against the respondent on behalf of himself and a group of colleagues who were all employed as LGV drivers. The claim form named an official of the trade union USDAW as their representative. They complained of unlawful deduction from wages in respect of overtime, bank holiday pay, and attending certain training. There was a parasitical complaint in respect of holiday pay. This appeal solely challenges the tribunal's decision in relation to overtime pay. The relevant litigation history in respect of that complaint is as follows.

4. Box 8.2 of the original claim form simply stated: "Overtime after 9.6 hours daily not after 48 hours weekly." There was a PH in April 2023, by which time Thompsons Solicitors LLP were representing those claimants who were union members. They were permitted to provide particulars of their complaints. That was done on 26 May 2023. In respect of overtime that document stated:

"The Claimants aver that they are contractually entitled to be paid at an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours."

5. The respondent was permitted to respond by 7 July 2023. On 15 June it sought further particulars of the 26 May Particulars of Claim. On 6 July 2023 it tabled its grounds of resistance disputing the complaints, but reiterated its request for more particulars of them.

6. There was a PH on 10 August 2023 before EJ McTigue. The claimants were represented by Mr Godfrey, Senior Lawyer, and the respondent by Mr Crozier of counsel. The tribunal ordered the claimants to amend their particulars to respond to the respondent's questions of 15 June, including:

“In paragraph 8 of the Further and Better Particulars, you assert that your clients “are contractually entitled to be paid at an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours”. Could you please identify and explain the specific source – whether a specific written contractual provision or otherwise – of this alleged contractual entitlement?”

7. The orders permitted the respondent thereafter to amend its grounds of resistance by 16 November 2023. The orders continued:

“The claimants and respondent shall by 30 November 2023 work collaboratively to agree a list of the issues to be determined at the next preliminary hearing. That list of issues must be lodged by with the Employment Tribunal by 30 November 2023.”

8. Further orders required the parties to give disclosure in January 2024, and to exchange witness statements in February, with the next PH being listed for 20 and 21 March 2024.

9. On 27 September 2023 amended further and better particulars of the claims were tabled. Under the heading “Overtime” at para. 8 the amended particulars read:

“The Claimants aver that they are contractually entitled to be paid at an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours. This contractual entitlement can be found at page 44-45 in the 2017 Alloga Staff Handbook.”

10. Para. 9 of the amended particulars averred that the respondent had been incorrectly limiting the enhanced rate of pay to only those hours that exceeded their basic weekly hours.

11. In its amended grounds of resistance of 16 November 2023, in response to para. 8 of the amended particulars of claim, the respondent stated:

“25. The Staff Handbook expressly states that “All drivers should refer to the Alloga UK Drivers’ Handbook for details of Overtime Payments”. All drivers employed in the Alloga business are expressly excluded from the scope of the overtime provisions in the Staff Handbook, which therefore does not confer any contractual entitlement in respect of overtime pay on the Claimants.

26. It is the Respondent’s long-standing practice that it pays enhanced overtime pay only in respect of working hours that exceed drivers’ basic weekly hours.

27. The Drivers’ Handbook states that drivers’ basic working hours are 48 hours per week. The

Claimant's daily contractual hours are not expressly defined. The Drivers' Handbook further states that overtime payments are dependent upon your contracted hours having been worked in any given day. The Respondent therefore submits that the correct construction of the Drivers' Handbook is that the Claimants are only entitled to enhanced overtime pay where they have exceeded 48 working hours in a given week.

28. In the alternative, in the absence of an unambiguous express contractual term in support of the Claimants' position, the Respondent submits that the payment of enhanced overtime pay only in respect of working hours that exceed their basic weekly hours is an implied term of the Claimants' contracts by custom and practice. The arrangement is a long-standing practice which is applied uniformly among the drivers in the Respondent's Alloga business and is well-known to the Claimants."

12. The representatives produced an agreed list of issues of 11 December 2023. This began:

"1. The following generic questions of contractual construction are agreed as those arising determination at the Preliminary Hearing to be held on 20 and 21 March 2024.

2. Did the Claimants' contracts of employment entitle them to payments calculated as follows:

Overtime

3. Did the Alloga Staff Handbook 2017 entitle the Claimants to overtime pay upon exceeding their prescribed basic daily hours of work?

4. If so, what were the Claimants' prescribed basic daily hours of work?"

The Employment Tribunal's Decision

13. The introductory section of the tribunal's reasons included this, at [3]:

"At this hearing, the claimants' representative has made submissions which only lightly touch on the agreed list of issues. The respondent asserts that this demonstrates that the claimants' case has altered and that an amendment application is required from the claimant. No amendment application has been received from the claimants. The claimants are professionally represented and so I conclude that their case remains as they have currently pleaded it. In addition, I also conclude that the agreed list of issues remains valid. I should also note that there has been a somewhat protracted process to clarify what the claimants' case is, and the relevant issues are. I address that now."

14. The tribunal then set out the litigation history, substantially as I have. It then set out, in full, the 11 December 2023 list of issues. The tribunal then said this:

"11. I should record that I accept the respondent's summary of the relevant law at paragraph 5 of their written submissions where it stated:

(1) The pleadings are required to "set out the essence of [the parties] respective cases". Justice requires "each party to know in essence what the other is saying, so they can properly meet it.... That is why there is a system of claim and response, and why an employment tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings": *Chandhok v Turkey* [2015] ICR 527, EAT per Langstaff P at [16]-[17].

(2) An agreed LoI is also a document of fundamental import to the conduct of proceedings in identifying fully the issues in the case. In *Parekh v London Borough of Brent* [2012] EWCA Civ 1630 at [31], the Court of Appeal held that "If the list of issues is agreed, then that will, as a general rule, limit the issues at the substantive hearing to those in the list".

(3) The only permissible route to vary the parties' pleadings, or expand or alter an agreed LoI, is by application to amend: see Chandhok at [17].

12. As I am not in receipt of an amendment application from the claimants, I shall determine the questions put forward by the list of issues. I have not been made aware of any reason why I should depart from the principles established in Chandhok v Turkey [2015] ICR 527, EAT and Parekh v London Borough of Brent [2012] EWCA Civ 1630."

15. In its findings of fact, after setting out the history of the respondent's business, to which I have referred, the tribunal turned to "Contractual documentation", beginning that section as follows:

18. Claimants who joined the respondent prior to 1 April 2013 had a contract of employment in the terms set out at pages 278 to 279 of the bundle ("the Old Contract").

19. Claimants who joined the respondent on or after 1 April 2013 had a contract of employment in the terms set out at pages 276 to 277 of the bundle ("the New Contract").

20. Each Claimant's contract, whether an Old Contract or a New Contract, contains a clause that includes the following wording:

Your rate of pay and other terms and conditions of employment are determined by the collective agreement between Alloga UK and the Union of Shop, Distributive and Allied Workers (Usdaw)

21. In relation to working hours and paid overtime, both the New and Old Contracts state at clause 6:

Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed 48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week."

16. After setting out the provisions of the New Contract and the Old Contract relating to holiday entitlement and bank holidays, the tribunal continued:

24. In September 1996 Unichem entered into a collective agreement with the USDAW and the TGWU. TGWU subsequently became part of Unite (pages 288 to 309).

25. In 2012 UDG issued a Professional Drivers Handbook (pages 173 to 204)

26. On May 2013 UDG and USDAW/SATA entered into a second tier bargaining agreement in relation to Bank Holiday working (page 205).

27. In 2017 Alloga issued a staff handbook for its employees (pages 206 to 252). This handbook applied to its employees working in its warehouses and not its drivers. Mr Harper accepted that point in cross examination.

28. In 2018 Alloga issued a Professional Drivers Handbook (pages 254 to 275)."

17. There then followed some findings of fact about the training issue and about an unsuccessful internal collective grievance and grievance appeal that had been raised by Mr Harper. The tribunal then gave itself a self-direction as to the law, which is not criticised by this appeal, as such. This

included citation from relevant authorities concerning the circumstances in which provisions found in a collective agreement may become incorporated into individual contracts of employment; and concerning general principles of contractual interpretation and construction.

18. I will set out the tribunal's conclusions in relation to the overtime issue in full.

“51. In order to reach my conclusions I return to the agreed list of issues. Issues 1 and 2 are narrative and so I start with issue 3.

Did the Alloga Staff Handbook 2017 entitle the Claimants to overtime pay upon exceeding their prescribed basic daily hours of work?

52. In relation to this issue, the claimants in their written submissions state:

Although the agreed list of issues indicates that the Tribunal should determine the above question, the Claimants submit that the relevant contractual question to progress this claim is whether the Claimants had a contractual entitlement to overtime pay upon exceeding their prescribed basic daily hours of work. That involves examining the contract of employment and which terms governing overtime pay are incorporated into it. The Claimant's position is that an entitlement to overtime pay on a daily (as opposed to weekly) basis is found in the collective agreement, which in turn relies on the provisions in the Drivers Handbooks. The 2017 Staff Handbook is a useful aid to interpretation of the overtime provisions for drivers (in that it evidences this entitlement, as indicated in the Claimants' further and better particulars of claim) but does not appear to be the source of the overtime provisions incorporated into the Claimants' contracts.

That however is not the issue which has been agreed for determination by the Tribunal. The parties, through their legal representatives, agreed a different issue for determination and it would be remiss of this Tribunal to depart from an agreed list of issues in these circumstances.

53. In relation to overtime, both the New and Old Contracts state at clause 6, “Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed 48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week.”

54. The Alloga Staff Handbook 2017 provides at page 44 that:

“Remuneration for overtime will be calculated on a daily basis” (page 249 of the bundle).

However, all of the claimants are employed by the respondent as drivers. The consequence of this is that the overtime provisions of the Alloga Staff Handbook 2017 do not apply to drivers. That is clear from page 44 of that document which states:

“All drivers should refer to the Alloga Drivers' Handbook for details of Overtime Payments.”

55. That position is also consistent with clause 4(c) of the collective agreement that Unichem entered into with the USDAW and the TGWU in September 1996 (page 293). It is also consistent with the evidence Mr Harper gave under cross examination where he accepted that that the Alloga Staff Handbook 2017 applied to individuals working in the Respondent's warehouses. Mr Harper also accepted that the relevant provisions for calculating overtime payments for drivers were to be found in the Drivers' Handbook. The Tribunal had in its possession 2 Professional Drivers' Handbooks, one issued by UDG in 2012 and one issued by Alloga in 2018. Neither handbook states that drivers' working hours are to be assessed by a daily basis and that overtime would be payable if daily working hours are exceeded. Both measure drivers' working time in weeks.

56. In addition, the Old and New Contracts refer to drivers' working time being measured and paid in weeks at clause 6 of both documents. Returning to clause 6 of both, it reads:

“6. Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed

48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week.” (page 276 and page 278)

57. Drivers are therefore contracted to work a core 48 hours per week (or are guaranteed payment for 48 hours where drivers do not in fact work 48 hours in a week), with overtime up to 60 hours per week. The measure in each instance is in hours per week, and not per day.

58. For these reasons, the Tribunal decides that the Alloga Staff Handbook 2017 does not entitle the Claimants to overtime pay upon exceeding their prescribed basic daily hours of work. The contractual documentation denotes that overtime for drivers employed by the respondent is only payable when they work in excess of 48 hours per week. It is therefore apparent that the claimants' claims in respect of this issue are not well founded and they are dismissed.

59. Due to the manner in which the list of issues has been decided, there is no need for the Tribunal to address issue 4.”

Grounds of Appeal, Arguments, Discussion, Conclusions

19. After a preamble, setting out background matters, the grounds of appeal document sets out two numbered grounds of appeal. The headlines of these, at para. 5, are expressed as follows:

“1 The ET erred in finding that the overtime provisions of the 2017 Staff Handbook did not apply to drivers.

2 The ET’s conclusion that the contractual documentation denotes that overtime for drivers is only payable when they work in excess of 48 hours per week was insufficiently rooted in findings and/or inadequately reasoned.”

20. Within each ground, paras. 6 and 7 set out, in sub-paragraphs, various more specific lines of challenge. The respondent’s Answer also raises further issues of its own, contesting the extent to which it is open to the claimants to run aspects of their grounds of appeal at all. In what follows, I will consider each of the principal strands of the issues raised on each side, in turn.

Interpretation of the Staff Handbook

21. Para 6.1 of the grounds contends that the tribunal erred in concluding that the Staff Handbook “did not apply to drivers” because it misconstrued its provision that: “All drivers should refer to the Alloga Drivers’ Handbook for details of Overtime Payments.” The tribunal’s interpretation – that this meant that the Drivers’ Handbook was the *sole* source of all provisions relating to drivers’ overtime – is said to have misread this sentence as though it began with the word: “Instead ...”.

22. Rather, it is contended, the tribunal should have concluded that the Staff Handbook’s overtime

provisions were generally applicable to *all* staff, including drivers, save that, for drivers, where the particular provisions in the Drivers' Handbook conflicted with those of the Staff Handbook, the former prevailed. It is then contended that, in respect of *eligibility* for overtime remuneration (as opposed to overtime *rates*), the provisions of the Drivers' Handbook did not conflict with those of the Staff Handbook, but were "aligned to them", as both provided for overtime remuneration to be "calculated on a daily basis". It is therefore said to have been "irrational" to interpret the Staff Handbook in a way that disapplied the daily basis for overtime remuneration for drivers.

23. The respondent contends that it is not open to the claimants to run this argument in the EAT at all. I will consider that contention later. But in any event I have considered the merits of this part of the claimants' challenge. I consider that the tribunal correctly concluded that the specific provisions relating to overtime in the Staff Handbook do not apply to drivers. My reasons follow.

24. First, all contractual documents must be construed in context. The context here was that the respondent's overall workforce included some people who worked in the warehouse and some who were drivers. Further, as the Drivers' Handbook identified, there were three categories of driver: Van Driver, LGV Driver and Shunter. While the Staff Handbook contained a number of sections relating to subjects that were plainly applicable to the workforce generally, the Drivers' Handbook contained a range of provisions which reflected, or concerned, the distinctive nature of drivers' work.

25. The interpretation contended for by this strand of the grounds of appeal would be inordinately complex. It would require drivers who wanted to know what their rights were in relation to overtime pay, to look in two places, and to conduct a comparison of each of the sub-strands of two sets of overtime provisions, in order to determine which conflicted and which were aligned. It would also require drivers to realise that this was the significance of the phrase "details of Overtime Payments". Had the authors of the Staff Handbook so intended, one might have expected them to set out, expressly, which of the provisions that followed applied to drivers' overtime, and which did not.

26. Further, as Mr Crozier pointed out, the provisions of the Drivers' Handbook which set out overtime rates, and when they apply, in fact differ from those of the Staff Handbook which do so. Beyond the broad similarity, that both set out what rates apply, and when they kick in, by reference to days of the week, the specifics of what rates apply, and when, are not the same.

27. This ground relies also upon the fact that the Drivers' Handbook (2018) includes the statement: "This booklet is designed to be read in conjunction with your Alloga UK Staff Handbook and forms an integral part of your Contract of Employment." But that sentence forms part of the very opening section, headed: "General", and subsection headed: "Introduction and Welcome". Its natural sense is that it is alerting the driver to the fact that the Drivers' Handbook is not an exhaustive statement of their terms, and that the Staff Handbook contains provisions which also apply to them.

28. In my judgment, the tribunal's reading is also the more natural reading within the context of the section of the Staff Handbook in which the sentence at issue appears. It is headed: "Overtime Payments". It begins: "Alloga is under no obligation to provide overtime." That is a general disclaimer which is easily understood as applying across the board. Then comes the sentence at issue: "All drivers should refer to the Alloga Drivers' Handbook for details of Overtime Payments." The other paragraphs include provision for an obligation to work overtime as reasonably required, for overtime remuneration to be calculated on a daily basis, for overtime entitlement for any day to be unaffected by whether on another day the employee did a full day's work, and for various overtime rates, depending on whether the employee works in excess of contracted hours on a weekday, a Saturday or a Sunday, as well as other provisions, such as for a fork lift driver's supplement.

29. This section as a whole is therefore not confined to the applicable overtime rates, but also addresses the point at which the right to overtime rates kicks in, reckoned by reference to hours worked on a given day over and above contracted hours, and other provisions. In that context, the natural meaning of the direction to drivers to refer to the Drivers' Handbook for "details of Overtime

Payments” is that *none* of the particular substantive provisions of this section, whether as to when the overtime rates kick in, or as to what those rates are, or otherwise, apply to drivers.

The Collective Agreement

30. Para. 6.2 of the Grounds of Appeal concerns the tribunal’s observation at [55] that its conclusion at [54] was consistent with clause 4(c) of the collective agreement. That refers to the collective agreement between Unichem, USDAW and TGWU of September 1996 (a copy of which the tribunal had). Clause 4(c) provided: “Drivers should refer to the Drivers Duties Booklet for details of both route premium and overtime provisions.” The ground contends that this was an error, because the tribunal did not have a copy of the Drivers Duty Booklet, so could not be sure what it provided. Alternatively, if its provisions were in fact the same as those of the later Drivers’ Handbooks, then they would be “aligned” with the collective agreement, which, under the heading “General”, included the statement that, for the purposes of calculating overtime pay “each day will stand by itself”.

31. However, as with the strikingly similar sentence in the Staff Handbook, I consider that clause 4(c) of the 1996 collective agreement meant that drivers were being told that the substantive provisions of that clause (headed “Overtime”) did not apply to them. That is, in my view, the natural reading, whether or not the “Drivers Duties Booklet” was, as it rather sounds, the predecessor of the Drivers’ Handbook (of which the tribunal had versions dating from 2012 and 2018) referred to in the later 2017 Staff Handbook. For similar reasons as I have set out in relation to the similar provision in the Staff Handbook, I do not think this provision of the collective agreement can, or should, be read as signalling that the overtime provisions applicable to drivers are to be found *partly* in one document and *partly* in another, depending on which of them differ, and which of them are “aligned”.

Mr Harper’s Evidence

32. The tribunal said at [55] that its reasoning at [54] was also “consistent” with the evidence given by Mr Harper in cross-examination, when he accepted that the Staff Handbook applied to

individuals working in the warehouses, and also accepted that the relevant provisions for calculating overtime payments for drivers were to be found in the Drivers' Handbook. Para. 6.3 of the grounds of appeal contends that it was wrong for the tribunal to rely on the evidence of a lay witness under cross-examination in relation to a complex matter of contractual construction, turning on multiple disputed documents, in a claim involving some 42 claimants.

33. However, for reasons I have given, I consider that the tribunal's interpretation of the documents, as meaning that the substantive provisions of the Staff Handbook concerning overtime did *not* apply to drivers, was sound; and it was not dependent on it being "consistent" with Mr Harper's acceptance of something put to him in cross-examination. Had the construction of the documents been ambiguous, it would not *necessarily* have been wrong to rely upon Mr Harper's evidence, if it contributed to the wider factual context, by way of support for one possible potential reading. However, had the tribunal's conclusion materially turned upon it, some further finding as to what, if any, evidence, he gave, as to *why* this was his understanding, might have been needed.

The Old and New Contracts

34. As the tribunal noted, the provisions of the documents referred to as the claimants' contracts (that is, the particular *documents* referred to as the Old and New Contracts, rather than whatever were, together, the sources of the totality of the terms of their contracts of employment in the legal sense), in both versions, included the following:

"Your days/hours of work are 5 from 7 per week, with two consecutive rest days, on a guaranteed 48 hours per week. You will be expected to do a reasonable amount of overtime up to a maximum of 60 hours in any week."

35. A strand of ground 2, across paras. 7, 7.1 and 7.2, challenges the tribunal's reliance, at [56] and [57], on this provision. In particular, this part of the ground contends that an employer can guarantee a number of contractual hours per week, while also remunerating overtime on the basis of hours worked in any one day; and that the fact that an employer caps the total number of hours that may be worked per week is also irrelevant to the basis used for calculating overtime pay.

36. Both counsel agreed, as do I, that, in this provision, “5 from 7 per week”, following the reference to “days/hours”, must mean “5 *days* out of 7 in a week”; and that the phrase “5 from 7 per week with two consecutive rest days” means that LGV drivers can be required to work on five *days* in any given seven-day period, with two consecutive rest days. The reference to a “guaranteed 48 hours per week” means (as the tribunal found at [57]) that each of the claimants is guaranteed to be paid for 48 hours each week, even if, in a given week, they in fact work less than 48 hours.

37. While this strand of the grounds of appeal postulates things that it would be logically *possible* for a contract simultaneously to provide, I do not think that the tribunal erred in regarding the actual wording of this specific provision in these contracts, as lending support to its conclusions on this complaint. This provision did not merely indicate that LGV drivers were guaranteed 48 hours per week, nor merely that the maximum number of hours that they would be required to work was capped at 60. Rather, after identifying the guaranteed week of 48 hours, it referred to being expected to do a reasonable amount of “overtime” up to a maximum of 60 hours. The tribunal was entitled to regard that as not only indicating that the metric of basic or core hours was hours per week, but as also supporting its conclusion at the end of [58] as to when entitlement to overtime rates kicks in.

38. It is, it might be said, still not logically impossible that an individual’s contract could *also* provide for there to be a certain number of prescribed hours per day, such that, if they drove more than 48 hours in a week, then the overtime *rate* applicable to those additional hours would depend on the distribution of those additional hours, over and above the prescribed hours, on each given day. But the claimants’ case was that they were entitled to be paid at overtime rates for *any* hours worked on a given day exceeding their prescribed hours that day, *regardless* of how many total hours they worked that week. The tribunal was entitled to regard clause 6 as pointing against that analysis.

What was the scope of the claimants’ pleaded case, and the issues before the tribunal? Was the tribunal required to determine the effect of the provisions of the Drivers’ Handbooks?

39. Para. 7.4 of the grounds of appeal contends that, in light of its finding that the Staff Handbook “deferred” to the Drivers’ Handbook in relation to overtime provisions, it was incumbent on the tribunal to make findings as to the effect of the relevant provisions of the Drivers’ Handbook. It is said then to have erred by failing sufficiently to grapple with those provisions, and with a number of arguments that the claimants advanced about them in closing submissions.

40. I will consider, first, whether it was incumbent on the tribunal to make findings about the effects of the provisions of the Drivers’ Handbook. Mr Crozier contended that it was not, because the claimants’ pleaded case relied, solely, on the provisions of the Staff Handbook, as the specific source of their entitlement to be paid “an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours”; and this was accurately captured in the list of issues. The tribunal was right, he submitted, to conclude that it was not obliged to consider an alternative way of putting their case, not identified in the list of issues, in the absence of an application to amend.

41. Mr Crozier went further, contending that the tribunal was not even, in the event, required to determine the claimants’ original pleaded case relying on the Staff Handbook. That, he argued, was because para. 19 of Ms Veale’s closing written submission to the tribunal (set out by the tribunal at its para. 52, which is reproduced at [18] of my present decision, above) amounted to an abandonment of any reliance upon the Staff Handbook. He relied upon the statement, in the course of that paragraph, that the Staff Handbook “does not appear to be the source of the overtime provisions”. Mr Crozier also argued that, in any event, the argument about the Staff Handbook advanced by ground 1 of the appeal, in particular at para. 6.1., was different from the basis of the pleaded case in the tribunal; and so the claimants should not be permitted to run it for the first time in the EAT.

42. Ms Veale contended that it was always clear in the tribunal proceedings that the general underlying issue, as identified in the original claim form, was whether the claimants had the right to overtime pay in respect of hours worked on any given day exceeding basic daily hours; and that the

preliminary hearing giving rise to the decision challenged by this appeal was intended definitively to decide that broad issue. She contended that the specific reference in the further amended particulars of claim to the provisions of the Staff Handbook did not limit or narrow the underlying issue. Nor did the framing of para. 3 of the list of issues, as it failed to reflect that broader basis of the claims.

43. Ms Veale also disagreed that her written closing submission to the tribunal had abandoned any reliance on the Staff Handbook. She referred to the fact that the passage in para. 19 relied upon by Mr Crozier began by stating that the Staff Handbook was a “useful aid to interpretation of the overtime provisions for drivers (in that it evidences this entitlement, as indicated in the Claimants’ further particulars of claim), but...” – followed by the words cited by Mr Crozier.

44. The relevant authorities were comprehensively reviewed in **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA Civ 185; [2025] ICR 1231. For present purposes it suffices to note the following, among the general points made by Warby LJ (Elisabeth Laing and Dingemans LJ concurring). First, tribunal proceedings are adversarial. The primary onus is on the parties to identify which claims they wish to bring, and which answers they wish to advance [33]. Secondly, the issues which they raise are those that emerge from an objective analysis of their statements of case, not other documents [34]. Thirdly, the tribunal is not obliged to determine issues that have been raised but later abandoned; and it only needs to decide enough to reach a conclusion on the claims which have been pressed [36]. Fourthly, while a list of issues is not a pleading but a case management tool, subject to limited exceptions a tribunal is usually entitled to confine its attention to the issues in an agreed list of issues [40].

45. In this case, as I have set out, the final amended particulars of claim asserted that the claimants “are contractually entitled to be paid at an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours. This contractual entitlement can be found at page 44-45 in the 2017 Alloga Staff Handbook.” I consider that these particulars conveyed that the claimants’ case

was that the whole of the *substantive* provisions found on those pages of the 2017 Staff Handbook (which, save for the heading and the opening line disclaiming any obligation to provide overtime, at the foot of the previous page, contained the whole section headed “Overtime Payments”) applied to them. These included provisions setting out various overtime rates in respect of hours in excess of contracted hours worked on either Monday – Friday, Saturday or Sunday.

46. However, the case advanced in the claimants’ closing written submission was that the provisions applying to them were to be found (*via* the collective agreement) in the Drivers’ Handbook. That this was a departure from their pleaded case was tacitly acknowledged by the observation that the Staff Handbook “does not appear to be the source” of the overtime provisions in their contracts. In line with that, the opening words of para. 19 effectively also acknowledged that they were now inviting the tribunal to consider a different question from that posed at para. 3 of the list of issues.

47. I also consider that the argument advanced by ground 1 and para 6.1 of the grounds of appeal is different from the original pleaded case. The original pleaded case was that the relevant substantive provisions were all to be found in the Staff Handbook. The closing submission was that they were all to be found in the Drivers’ Handbook. The case advanced by ground 1 is, in effect, a variation of both, being that the effect of the sentence in the Staff Handbook referring to drivers is that provisions drawn from *both* sources may apply. That was a materially different way of putting the case from either the original pleaded case or the contentions advanced in the closing written argument.

48. I also do not agree that there was a general issue of what were the applicable provisions of the claimants’ contracts (in the overall legal sense) relating to overtime, before the tribunal at this hearing, and which it was required to determine. True it is that the original claim form asserted the claim in general terms, and the May 2023 particulars asserted generally that the claimants “are contractually entitled to be paid at an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours.” But it was precisely because the pleadings up to that point only

identified *what* they claimed, but not the *basis* on which they claimed it, that particulars of the claimed *source* of this claimed entitlement were sought, and ordered by the tribunal.

49. The further particulars of September 2023 then added: “This contractual entitlement can be found at page 44-45 in the 2017 Alloga Staff Handbook.” These particulars conveyed, as I have stated, that the claimants’ case was that *the* source of the claimed entitlement was the substantive provisions found in the 2017 Staff Handbook. The respondent was entitled thereafter to rely upon that as the specific substantive case that was being advanced, and that it was required to answer. Were it otherwise, the requirement to provide these particulars would have served no purpose.

50. As I have set out, the amended response asserted that the Staff Handbook expressly excluded drivers from the scope of its overtime provisions, and therefore did not confer *any* contractual entitlement in respect of overtime pay on the claimants. It went on to assert that the effect of the provisions in the Drivers’ Handbook was that the claimants were only entitled to enhanced overtime pay for hours exceeding 48 hours in a given week; alternatively, that there was such an implied term.

51. That served to put the claimants on notice that the respondent’s substantive answer to the particularised claim was, simply, that the substantive provisions of the Staff Handbook did not apply to them *at all*. I agree with Mr Crozier, that the fact that the amended response also asserted what the position in fact was, on the basis of the Drivers’ Handbook, or alternatively custom and practice, did not serve to widen the basis on which the *claims* were advanced. These were in effect simply assertions advanced by the respondent in support of its case that the Staff Handbook did not apply.

52. It would have been open to the claimants, who were represented by solicitors, and, at the start of trial, by counsel, to apply at any point thereafter to amend their claims to assert (in the alternative if they wished) that, if the source of the claimed entitlement was not the Staff Handbook, then it was the collective agreement and/or the Drivers Handbook, and/or to advance their case as to the correct interpretation of the Drivers’ Handbook provisions. Had they done so promptly following the tabling

of the amended Grounds of Resistance such an application might have been hard to resist. However, they did not do so prior to, nor at the start of, the trial, nor in closing submissions.

53. Having regard to the foregoing analysis of the pleadings, to the fact that at the relevant times the claimants were professionally represented, and to the fact that the list of issues was not only agreed, but accurate, I conclude, applying the guidance in Moustache, that the tribunal was right in its analysis of the pleaded claim, and to treat the list of issues as the touchstone for what it had to decide, and to conclude that, in the absence of an application to amend being made (and granted) there was no good reason to depart from it. I agree with Mr Crozier, borrowing from an expression used by Underhill LJ in Scicluna v Zippy Stitch Limited [2020] EWCA Civ 1320, that the claimants had chosen to “put all their eggs in the basket” of relying upon the Staff Handbook as the substantive source of the entitlement to overtime pay upon which they relied.

54. I am also bound to say that I see some force in Mr Crozier’s submission that in closing arguments the claimants in substance abandoned the pleaded case relying on the substantive provisions of the Staff Handbook. But, given that there was no alternative live pleaded way of advancing the claim, it was, in any event, still prudent of the tribunal to have considered the pleaded case on its merits. For reasons I have given, it did not err in rejecting that case on its merits.

55. I also, for reasons I have set out, see force in Mr Crozier’s submission that the argument of interpretation in respect of the Staff Handbook advanced in ground 1 of this appeal was not advanced in that form before the tribunal. It bespeaks a further attempt by the claimants to reposition or repackage how they put their case at the appeal stage, something that is not ordinarily permitted by the EAT. Nevertheless, I have considered it on its merits, and rejected it for the reasons I have given.

Interpretation of the Drivers’ Handbook

56. For all of the foregoing reasons the tribunal was not required to determine whether the substantive provisions of the Drivers’ Handbook relating to overtime conferred upon the claimants,

as LGV drivers, the right to be paid “an enhanced rate of pay for working hours that exceed their contractually prescribed basic daily hours”, which they claimed to enjoy. The tribunal therefore did not err by not providing adequate reasoning in relation to this aspect. Had it been required to determine this issue, however, I would not have considered its reasoning to be adequate, having regard to the range and nature of the arguments raised on both sides.

57. Ms Veale relied in particular on section (b) in the Drivers’ Handbook, which included the statement: “Overtime payments are applicable dependent upon your contracted hours having been worked in any one day. Any additional shifts undertaken over and above the rostered duty of 5 days also qualify.” She also relied upon the fact that this set out various overtime rates for Monday to Saturday, Sundays and Bank Holidays. She also contended that the respondent’s interpretation would have the consequence that LGV drivers might strive to end their week on a Sunday, to ensure that they earned the highest overtime rate for hours worked over and above 48 hours in any given week.

58. Mr Crozier, for his part, relied upon section (a) which stated: “The basic week for an LGV driver is 48 hours. Unless altered by mutual consent, this can be any consecutive working days from 7, as per duty roster, excluding Saturday evening.” He also raised an issue as to whether, on a correct construction, section (b) applied to LGV drivers (as opposed to other kinds of driver) *at all*, as well as disagreeing about what (b) meant for LGV drivers, if it did apply to them.

59. It was also the respondent’s case that, in the nature of their work as LGV drivers, the claimants did not have any fixed contracted, or prescribed, daily hours. The respondent also highlighted that, while the claim form had referred to 9.6 hours per day, Ms Veale contended in her submissions that the claimants’ basic daily hours were 7.5 per day. Mr Crozier also argued that the claimants’ approach would lead to the surprising outcome that if, in a given week, a LGV driver worked fewer than 48 hours, they would be entitled to be paid for 48 hours, *and* if, on a given day, they had worked more than the putative prescribed hours, then some of those 48 hours would be paid at overtime rates.

60. I note also that the respondent's position was and is that, if the position is not unambiguously or wholly determined by express contractual provisions, then the approach that it has hitherto applied to LGV drivers over some years has given rise to a term implied by custom and practice. I do not know what evidence the tribunal may have had about the rate or rates at which the respondent was in fact paying the claimants for hours worked in excess of 48 per week.

61. Given the conclusions I have reached in earlier sections, however, I do not need to opine on any of these arguments on either side.

Outcome

62. The appeal is dismissed.